

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

VIRGIL ARMSTRONG,

Plaintiff,

v.

DEPUTY C. WHALEN, *et al.*,

Defendants.

CASE NO. C18-0845-JCC

ORDER

This matter comes before the Court on the parties' stipulated motion for a Rule 35 examination (Dkt. No. 75). Having thoroughly considered the parties' stipulated motion and the relevant record and finding that Plaintiff Virgil Armstrong's mental condition is in controversy and that there is good cause, the Court hereby GRANTS the motion. A Rule 35 examination of Plaintiff Virgil Armstrong may be conducted subject to the following terms and conditions:

1. The parties agree that a Federal Rule of Civil Procedure 35 examination of Plaintiff Virgil Armstrong shall take place on:

Date: **Monday, February 1, 2021**

Time: **1:00 p.m. PST**

Location: Northwest Physical Medicine
801 Pine Street, Suite 100
Seattle, Washington 98101

Physician: Dr. Russell Vandenbelt

NOTE: By mutual agreement of all parties, this examination will be conducted via remote video conferencing

2. The Federal Rule of Civil Procedure 35 examination by Dr. Vandenberg shall conclude no later than four (4) hours later, excluding reasonable breaks. The examination shall include administration and completion of the MMPI-2-RF (short form of the MMPI) and an interview. ***The remote administration of the MMPI-2-RF shall be accomplished by Dr. Vandenberg reading the test questions and having Plaintiff Armstrong enter the answers on an answer sheet emailed to his representative for printing before the testing.*** The examination shall not be audio or video recorded by any party, except where strictly necessary to comply with mutually agreed upon remote video conferencing requirements.

3. No party shall be permitted to have a representative present during testing. During the interview portion of the examination, Plaintiff Armstrong may have a representative present; however, the representative shall not be related to Plaintiff and shall not be a friend of Plaintiff. The representative shall remain silent at all times during the interview.

4. Fourteen (14) days prior to the examination, Plaintiff Armstrong's counsel shall inform Defendants' counsel via e-mail of the name of the representative, the representative's e-mail address and the representative's relationship to Plaintiff. The Federal Rule of Civil Procedure 35 examiner shall send the MMPI-2-RF answer sheet referred to in paragraph 4 above by e-mail directly to Plaintiff's designated representative to the e-mail address identified by Plaintiff. Defense counsel will inform the examiner of the name of Plaintiff's representative and the representative's e-mail address prior to the examination.

5. On completion of the exam on February 1, 2021, Plaintiff's representative shall return the completed MMPI-2-RF answer sheet to the examiner by one of the following means:

- Scan and return via e-mail to the examiner at ravmd22@me.com; or
 - Return by first class mail to: Russell A. Vandenberg, M.D.
11201 SE 8th Street, #105
Bellevue, WA 98004
- or
- Take a digital photograph of the answer sheet, e-mail the digital image to the examiner at ravmd22@me.com and send the original answer sheet by first class mail to the address indicated above.

6. Defendants shall deliver to Plaintiff's counsel a copy of Dr. Vandenberg's report no later than fifty (50) days following the examination.

7. Pursuant to Federal Rule of Civil Procedure 35(b)(2), the report must be in writing and must set out in detail the examiner's findings, including diagnoses and conclusions.

DATED this 11th day of January 2021.



John C. Coughenour
UNITED STATES DISTRICT JUDGE